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9  
10 UNITED STATES BANKRUPTCY COURT  
11 CENTRAL DISTRICT OF CALIFORNIA  
12

13 In re ) Bk. No. 9:19-bk-11573-MB  
14 HVI Cat Canyon,, ) Chapter 11  
15 Debtor. ) **RESPONSE TO MOTION FOR POST-  
16 PETITION FINANCING, ETC.**

17 Date: November 12, 2019  
18 Time: 11:00 a.m.  
19 Place: 1415 State Street  
20 Courtroom 201  
21 Santa Barbara, CA 93101

22 GLR, LLC, junior secured creditor ("GLR"), brings its response to the Trustee's Motion for post-  
23 petition financing, for use of cash collateral, etc., as follows:

24 GLR does not oppose the Motion. It does not oppose the request to prime its lien, nor does it  
25 oppose the "carve out" for professionals. It does not oppose the request for the use of cash collateral.

26 GLR does oppose two specific provisions of the Motion. First, the Motion requests authority  
27 for the Trustee to waive the estate's rights under a Right of First Refusal with regard to a sale by UBS  
28 of its secured position. Second, the Motion does not provide GLR with a replacement lien on post-  
filing assets.

This case will without a doubt be a liquidation. Both the Trustee and the Committee have  
pending applications to allow them to select financial advisors. The clear intent of those applications is  
to allow the assets of the estate to be effectively marketed. As assets are sold, UBS will be paid. If asset

1 sales are sufficient, junior classes, starting with GLR, have a right to share in any distributions. GLR  
2 has validly perfected liens on all assets of the Debtor, subordinate to the UBS claim (and in some cases  
3 to secured property tax claims).

4 The Trustee's Motion states that the Court's finding regarding valuation of the assets at the  
5 hearing on cash collateral deprives GLR of the right to adequate protection. While that may be true of  
6 adequate protection for the use of cash collateral, that finding does not apply for all purposes. It was  
7 made after a hearing in which only one party provided evidence of value. It was not made on a motion  
8 to find GLR to be unsecured under section 506. Indeed, such a Motion would be inappropriate. In a  
9 liquidation case, the money goes as far as it goes, and the only real valuation that matters is the actual  
10 sale price realized. If indeed there were no hope of greater value, the Court should not have appointed  
11 a Trustee, it should have merely shut down operations and given UBS relief from the stay. It is only the  
12 hope that distribution can be made to other creditors that make appointment of a Trustee and continued  
13 operation of the business sensible.

14 The provision for a Right of First Refusal ("ROFR") has one purpose-to ensure a level playing  
15 field when it comes to the marketing of assets. It specifically only applies to competitors, not to financial  
16 institutions. The purpose is to prevent a competitor from buying the UBS position and thereby  
17 rendering further marketing of assets untenable. Since the provision can hardly matter to UBS, this  
18 requirement of a waiver likely comes from a competitor that wishes to bid on the Debtor's assets. If a  
19 buyer buys the UBS position but can bid far more than it has spent for estate assets, other bidding will  
20 be chilled. The unnamed competitor that seeks this waiver will have an advantage in bidding  
21 inappropriate for the Chapter 11 process.

22 As against this, Movant makes certain arguments. There is an argument that the provision is  
23 unassumable, as a financial accommodation. It isn't a contract to make a loan, it's a contract to purchase  
24 something at a specified price, and it is assumable. Furthermore, if UBS wishes to argue it is not  
25 assumable, it should be done in the context of a Motion to Assume, not as a half paragraph in a motion  
26 filed on less than a day's notice. The next argument is similarly unfounded. The Trustee argues that he  
27 would have to demonstrate the ability to pay the loan in full in order to assume the ROFR. There is no  
28 need for the contract to be assumed until there is a sale of the UBS obligation. At that time, the Trustee

1 can make a determination as to whether he can demonstrate the ability to pay the discounted amount,  
2 not the full amount. Finally, the Trustee argues that it would be difficult to find the funds to assume  
3 the contract. Perhaps that is so, but it does not mean it will be impossible. If UBS has a sale of its  
4 position-to a competitor-it will give notice and the Trustee will have 70 days to pay. This may be  
5 possible, primarily by arranging sales of some of the Debtor's assets. If it isn't possible, it isn't. But it  
6 represents the primary way through this case that provides payment to other creditors.

7 Meanwhile, this right is being given up for only a few weeks of operating capital. In fact, keeping  
8 the Debtor operating protects UBS more than any other party-it should be happy to finance the  
9 operations just to keep the wells from being capped and spilling, and for the value of the assets to be  
10 significantly reduced.

11 UBS' position with regard to the minimal value of the Debtor's assets (not shared by all parties)  
12 is potentially the best thing for the other creditors of this case. Assuming UBS believes the testimony  
13 of its own expert, it should be willing to accept a steeply discounted payoff of its obligation. That in  
14 turn allows other classes of creditors to share in distributions. To permit a competitor, but not the estate,  
15 to take advantage of such a discount subverts the entire liquidation process.

16 GLR further requests that it be given a replacement lien, with the same validity, extent, and  
17 priority as its present lien, on post-filing assets of the Debtor. There is no reason its cash collateral  
18 should be used without a replacement lien. If the replacement lien is valueless (if GLR is "out of the  
19 money" as described in the Motion), so be it. A replacement lien does no harm to the estate in that  
20 scenario.

21 Wherefore, GLR requests that the Court grant the Motion as amended by this pleading.

22 Dated: 11/11, 2019

BEALL & BURKHARDT, APC

23  
24 By:   
25 William C. Beall, Counsel for GLR, LLC  
26  
27  
28

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

1114 State Street, Suite 200, Santa Barbara, CA 93101

A true and correct copy of the foregoing document entitled (*specify*):

**RESPONSE TO MOTION FOR POST-PETITION FINANCING, ETC.**

will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) 11/11/2019, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

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This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

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☐ Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On (date) 11/11/2019, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

**Honorable Martin Barash**  
**United States Bankruptcy Court**  
**21041 Burbank Boulevard, Suite 342**  
**Woodland Hills, CA 91367**

☐ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method**

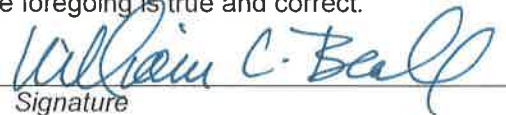
**for each person or entity served):** Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) \_\_\_\_\_, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

11/11/2019  
Date

William C. Beall  
Printed Name

  
Signature